

SPECIAL CIVIL APPLICATION No 1958 of 1987

Hon'ble MR.JUSTICE S.D.DAVE

[illegible]

PRASANNAKUMAR L MEHTA

STATE OF GUJARAT

NOTICE NOT RECD BACK for Respondent No. 4

Date of decision: 25/06/1999

This petition came to be filed in year 1987 by three petitioners. Ld. counsel Mr. Jhaveri who appears

for the petitioners makes a statement that the petitioner No.1 Prasannakumar Lalbhai Mehta is no more, and that the petitioners No. 2 & 3 are the only heirs & legal representatives of the said deceased. Upon this statement, this petition has been taken for final hearing.

The case of the petitioners is that, they are the owners of the premises situated at Mansarovar Road, Ambawadi, Ward No. 2/672/2, together with the out house and garage, bearing Palanpur City Survey No. 9758, 9759 and 9738. According to the petitioners, this property came to be requisitioned by Collector, Banaskantha by the orders dated May 18, 1951 on the ground that the same requires to be requisitioned for the State purposes, namely for the establishment and running of the office, stores and residence of the "Anti-Locust Operations". In pursuance of this order dated May 18, 1951, the Mamaltdar, Palanpur, was directed to take over possession of the above said premises and to hand over the same to Assistant Locust Entomologist, Palanpur, the respondent No.3. Any how it is not in dispute that there was some delay in taking the possession of the premises and ultimately this could be done with effect from 5th June 1951. This petition came to be filed in 1987. Ld. counsel Mr. Jhaveri who appears for the petitioners says that, till today there has been no de-requisition and that the above said premises remain under requisition.

The contention coming from the Ld. counsel for the petitioners is that, now the requisition has become illegal and unaltered in view of the amendment in Section 9 of the Bombay Land Requisition Act, 1948. Ld. counsel also urges that there is a distinction between the concept of acquisition and requisition and that the requisition cannot be a permanent feature.

Ld. counsel for the petitioners firstly draws my attention to the amended provisions as contained in Section 9 of the Bombay Land Requisition Act, 1948. The emphasis is on sub clause (1A) (a), wherein it has been provided that, " notwithstanding anything contained in sub-section (1), the State Government shall release from requisition any land requisitioned or continued to be subject to requisition under this Act before the commencement of the Bombay Land Requisition (Gujarat Amendment) Act, 1980 on or before the expiry of period of (seven years) from such commencement."

The above said provision, therefore, would go to show that the premises in question could not have been subjected to the requisition for a period of seven years

with effect from the date of coming in to operation of the Amendment Act of 1980. This period is well over.

The reliance is being placed upon the Supreme Court decision in Grahak Sanstha Manch and others, Petitioners v. State of Maharashtra, Respondent, AIR 1994, S.C. pg. 2319. This decision makes clear distinction between the two concepts of Requisition and Acquisition. It is not necessary to examine this distinction between the two concepts in detail for the decision of this petition. Suffice it would be to notice that, it has been said unequivocally that the requisition cannot become a permanent feature and cannot take place of something which could have been done under the acquisition. This decision therefore recognises the principle that there cannot be something like a permanent requisition.

Looking to the above said Amendment and the pronouncement of the Supreme Court, it appears that the present petition requires to be allowed and the respondents are required to be directed to de-requisition the premises in question. I therefore order accordingly. The State Government and Collector, Banaskantha are hereby ordered and directed to have de-requisition of the premises in question, and to take all the necessary steps following the above said action, so that the actual physical possession of the premises under requisition could be handed over to the petitioners. This should be done within a period of three months from the date of receipt of writ of these orders. Rule is made absolute accordingly, with no order as to costs.

-----

/vgn.